

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In re )  
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Amendment of Part 90 of the Commission's )  
Rules to Adopt Regulations for )  
Automatic Vehicle Monitoring Systems )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY  
PR Docket No. 95-61

To: The Commission

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**REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION**

An ad hoc coalition of natural gas distribution utilities ("Gas Utilities") by counsel, and pursuant to Commission Rule Section 1.429, reply to the oppositions filed to the Gas Utilities' April 24, 1995 Limited Petition for Reconsideration ("Limited Petition") to the Commission's February 6, 1995 Report and Order establishing rules for the Location and Monitoring Service ("LMS").<sup>1/</sup> In support, the following is shown:

1. The predominant issues the Commission faces on reconsideration of its *Decision*, and the only issues that concern the Gas Utilities and the other Part 15 users and manufacturers, are interference issues. They involve in each case where to draw the line between accommodating the competing public interest equities of the following three classes of interested parties: (1) the various manufacturers, retailers and users of the millions of existing Part 15 devices operating in the 902-928 MHz band, and the millions more to be deployed in the future; (2) an undetermined, but nevertheless significant, number of government and transportation concerns using this band for localized tracking of rolling stock and shipping containers, and collecting tolls; and (3) a vocal

<sup>1/</sup> Automatic Vehicle Monitoring Systems, 10 FCC Rcd \_\_\_, FCC 95-41, 60 FR 15248 (March 23, 1995) ("*Decision*").

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handful of companies, who together hold a mere six constructed, operating commercial multilateration systems ("MLS")-- providing service to a total of no more than 50,000 persons -- and who hold hundreds more MLS licenses they admit they cannot find a "business case" to construct, unless the Commission allows them to turn MLS into a mini personal communications service ("PCS").

2. The recitation above is not meant to minimize the potential public interest benefit of MLS, but to emphasize that the Commission has a legitimate concern to protect the demonstrated public interest in Part 15's use of the spectrum.<sup>2/</sup> And the repeated canard that the Commission has unlawfully elevated Part 15 to "co-primary" status in the band by its efforts to prevent destruction of the public interest equities of widespread use of these devices is not only untrue, but it ignores the delicate competing policy concerns the Commission attempted to balance in its *Decision*.

3. Contrary to the MLS community's protestations, the Commission did not make Part 15 devices co-primary at all. It could have; maybe even should have; but it did not. It did establish two mechanisms to protect Part 15 devices from interference.<sup>3/</sup> First, it defined, as it has full authority and

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<sup>2/</sup> Indeed, as Airtouch Teletrac correctly states, a number of utilities do now, and more in the future would, find the location and tracking services MLS systems provide beneficial. See Airtouch Teletrac Opposition at 6-7.

<sup>3/</sup> The MLS community seems totally unwilling to accept that their systems could interfere with Part 15 operations -- see Pinpoint Opposition at 18; Airtouch Teletrac Opposition at 5 n. 8; Mobilevision Opposition at 7 -- while having no doubt (continued...)

expertise to do, the limits of harmful interference to MLS stations.<sup>4/</sup> Second, it sought in its role of traffic cop to

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<sup>3/</sup> (...continued)

of the need for protection from interference from Part 15 operations. See Pinpoint Opposition at 20; Mobilevision Reply at 7.

It is at best counter-intuitive to suppose 30 watt base and mobile transmissions are unlikely to interfere with receivers listening for one watt or lower powered transmitters, while also supposing those one watt transmitters will likely interfere with receivers listening for 30 watt transmitters. In this connection, the Gas Utilities reject the MLS community's reliance on the paper prepared by Mobilevision Engineer G.K. Smith, the thesis of which was that Part 15 devices themselves would interfere with each other prior to MLS ever becoming a problem. See Mobilevision Further Comments (March 15, 1994). Aside from their ignoring that the self-serving Mobilevision paper was refuted by another paper submitted by AT&T Engineer Dr. Jay E. Padgett (see TIA Reply Comments at 3-5. (March 29, 1994)), the Mobilevision paper itself ignores the band crowding phenomenon discussed in the Gas Utilities' Limited Petition. Of course, so did each of the MLS proponents.

It is undeniably true that the number of Part 15 devices which may be accommodated in any fixed amount of spectrum is limited. Eventually, if enough such devices are crowded into a limited band they will interfere with one another. However, as the Gas Utilities explained in their Limited Petition, the existence of high powered MLS systems, especially those operating with wideband forward links and considerable voice traffic, will cause Part 15 devices to migrate and congregate into the non-MLS portion of the 902-928 MHz band with congestion and interference likely. Accordingly, it proves nothing to suggest Part 15 will interfere with itself if MLS systems are the underlying cause of that interference.

<sup>4/</sup>

In its many petitions and oppositions on reconsideration, the MLS community uniformly argues for making the interference threshold definitions "rebuttable presumptions." To do so would amount to abolishing the definitions altogether. The law treats presumptions as merely fixing the burden of persuasion. See Cleary, *McCormick on Evidence*, Sec. 345 (2d ed. 1972). Thus, in the face of a rebuttable presumption of non-interference, the burden would be on the party complaining of interference to prove the existence of the contrary fact, interference. That is no different than having no presumption at all. It would invariably place the Commission in the untenable position of deciding thousands of fact-intensive  
(continued...)

determine through testing that its allocation of permanent spectrum to MLS systems would not render Part 15 operations nugatory.

4. These two modest measures hardly elevated Part 15's status to co-primary. It does make a difficult policy decision this agency is charged by Congress to make. Had the Commission not taken steps to protect Part 15 equities, Part 15 interests would have had no alternative but to make their case directly to Congress, with the danger that a much less well-crafted resolution would have been forced on this agency. That danger, of course, still exists, given that the record of this proceeding is replete with evidence of Congressional intent to protect the Part 15 community.

5. Nor can the MLS proponents be heard to complain they have had insufficient notice to satisfy the Administrative Procedures Act ("APA") of the Commission's efforts to protect Part 15 devices. The *Notice of Proposed Rule Making* specifically called for comment on interference from Part 15 devices. See *Automatic Vehicle Monitoring Systems*, 8 FCC Rcd 2502, 2506-07 (1993). The issue of interference to and from Part 15 devices has been thoroughly discussed in the record. The MLS community submitted a consensus paper last year urging the Commission to establish a safe harbor

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<sup>4/</sup>(...continued)

complaints between poorly represented consumers and small businesses, and ably lawyered MLS companies. For the reasons discussed in the Gas Utilities' Opposition to Petitions to Deny, the Commission should decline to travel that road.

definitional threshold for Part 15 interference to MLS.<sup>5/</sup> Indeed, last summer, the Commission staff circulated, albeit informally, a proposal for definitional interference thresholds, to which each of the MLS proponents repeatedly responded.<sup>6/</sup>

6. APA Section 553(b)(3)'s notice requirement is designed to ensure interested parties are fairly apprised of issues involved so they know whether their interests are at stake in an agency rule making. See *Spartan Broadcasting Co. v. Federal Communications Commission*, 619 F.2d 314, 321 (4th Cir. 1980). The agency need not publish in advance every precise proposal the agency may subsequently adopt; nor is it required to provide additional notice of a final rule which differs from a proposed rule partly, at least, as a result of consideration of public comment. *Id.* Clearly, in light of the above discussion and the voluminous record of MLS submissions on the subject, it is manifest that the MLS community cannot complain it was blindsided by the final rules issued to resolve interference to and from Part 15 devices. It is

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<sup>5/</sup> See LMS Consensus Position on Interference (June 23, 1994). This paper specifically delineated those few classes of Part 15 devices the MLS community considered an interference threat. Comparison of that June 23, 1994, paper with the interference threshold definitions contained in the *Decision*, show the Commission adopted the thresholds of Rule Section 90.361 right from that June 23, 1994, paper authored by the very parties who now attack those thresholds.

<sup>6/</sup> In fact, the record shows the MLS community lobbied the Commission on its view of the appropriate treatment of these interference issues right up to the adoption of the final rules. See, e.g., Southwestern Bell Mobile Systems Ex Parte Letter (January 17, 1995) (discussing issues of Part 15 status and co-existence with MLS providers); Mobilevision Ex Parte Letter (January 10, 1995) (discussing irrebuttable interference presumptions); Pinpoint Ex Parte Letter (December 29, 1994) (discussing calls for testing).

equally clear the *Decision* does not elevate Part 15 to co-primary status.

7. As noted in their Opposition to Petitions for Reconsideration, the Gas Utilities are disappointed in the hardline, uncompromising approach the MLS proponents adopted on reconsideration. The Gas Utilities made a number of suggestions in their Limited Petition in an attempt to minimize interference between Part 15 and MLS providers. With rare exceptions, the MLS community's response has been to avoid altogether responding to those requests, content instead to recite their mantra that Part 15 is secondary.

8. Thus, no MLS proponent provided a direct, substantive response to the Gas Utilities' call for specific criteria and procedures for testing prior to MLS operation. Most complained, as did the Gas Utilities, of the lack of testing guidelines and criteria; but rather than responding to the Gas Utilities' and others' suggested testing procedures and guidelines with their own, the MLS community simply stonewalled with their tired reframe that there should be no testing.<sup>2/</sup> By contrast, Texas Instruments, Incorporated ("TI"), although arguing that testing should not be

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<sup>2/</sup> See SBMS Opposition at 10 (asserting testing would delay service); Airtouch Teletrac Opposition at 3 n.4 ("The predicate for testing at all is without merit"); Pinpoint Opposition at 13-14 (labeling Gas Utilities' testing criteria "extreme," but failing to suggest an alternative of its own). Mobilevision's filings, on the other hand, appear not to oppose either the testing requirement or the Gas Utilities' call for the Commission to define clear standards for evaluation, and to set appropriate procedures for Part 15 participation therein. See generally Mobilevision Petition; Mobilevision Opposition.

required for non-MLS systems -- a position with which the Gas Utilities generally concur -- nevertheless agrees that if the Commission does require testing of those systems, it should specify guidelines and provide for Part 15 participation and public comment.<sup>8/</sup> TI Opposition at 17-18.

9. Pinpoint does seek to defend its proposed wide-band forward link -- the only MLS proponent choosing to do so --

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<sup>8/</sup> Although agreeing that testing of non-multilateration systems is unnecessary, the Gas Utilities concur with those petitioners who argue the definitional interference thresholds should apply to grandfathered MLS systems and non-multilateration MLS systems. With respect to grandfathered stations, it is reasonable to relax their operational parameters as a transition mechanism. No reason exists, however, to provide such systems -- operating out of their authorized sub-bands and at parameters at variance with the revised rules -- heightened interference protection, and no party has posited any such reason. As to non-MLS systems, given their localized nature, even less chance exists of interference to these systems than to MLS systems from Part 15 devices. Accordingly, no need exists to exempt such systems from the interference definitions.

On a related issue, the Gas Utilities continue to oppose blanket wide-area licenses for non-multilateration systems, but contrary to TI's assertion, the Gas Utilities do not support fixed mileage separations for non-MLS systems. See TI Opposition at 5 n. 13. Rather, non-MLS systems are not an interference threat to Part 15 because non-MLS systems are localized. To the extent non-MLS systems are not localized, they may become an interference threat and should be subject to additional interference limitations, such as testing. Significantly, nothing would prevent such licensees from offering all the services they say they will offer. Merely, they will be required to individually license each transmitter so Part 15 users will be able to review the Commission's database and tailor their use of Part 15 devices accordingly.

It is for similar reasons that the Gas Utilities support a reduction in permissible power of non-MLS stations to 10 watts, unless highly directional antennae are employed. Significantly, no non-MLS party explained in its opposition why it could not operate under such a restriction. Cf. TI Opposition at 4-5 (opposing proposed one watt limit).

claiming it has never been shown such links would cause interference, and asserting it has shown wide-band forward links are "largely compatible" with Part 15 devices.<sup>2/</sup> Review of the cited Pinpoint submission indicates it reports an unrepresentative test involving a single cordless telephone. Of course no interference occurred in that situation. The cordless telephone simply hopped off the frequencies occupied by Pinpoint's wide-band forward link, as it is designed to do to avoid interference. Significantly, however, when the telephone was forced to operate on the frequencies Pinpoint employed for its wide-band forward link -- as would be the case in the typical operating environment where the cordless telephone is operating in the presence of other cordless telephones and other Part 15 devices which are also trying to avoid interference from the wideband forward link -- interference occurred. See Pinpoint September 15, 1994 Ex Parte Letter at 20-21. Thus, Pinpoint's own submission shows its wideband forward link to be capable of substantial interference to Part 15 devices, fully supporting the Gas Utilities' and other parties' call for the Commission to prohibit such links.<sup>10/</sup>

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<sup>2/</sup> Pinpoint Opposition at 18 & n. 48, citing Pinpoint September 15, 1994, Ex Parte Letter at 20-22.

<sup>10/</sup> Pinpoint's "test" amply illustrates the danger of fashioning a testing rule which does not delineate specific criteria or which does not provide for involvement and comment from the Part 15 community and the public. The MLS community will have the clear incentive to minimize its testing efforts and to downplay any results indicating interference. Part 15 and public involvement and comment in testing are therefore essential to ensure the public continues to receive the public interest benefits of Part 15 devices as well as the public interest benefits available from MLS.



10. Finally, only Airtouch and Mobilevision continue to argue for liberal interconnection with the public switched telephone network.<sup>11/</sup> Airtouch Teletrac, claiming the Commission should allow the marketplace to rule as to whether interconnected voice service is provided, completely ignores the arguments of the Gas Utilities, the Part 15 community and Pinpoint concerning the interference potential of such communications in a shared band.<sup>12/</sup> See Airtouch Teletrac Opposition at 12-13. Airtouch also asserts the restrictions proposed by the Gas Utilities and others would prevent the public from remotely accessing vehicle locations. *Id.* at 14. This is nonsense. The MLS switch will always have the most current location information on any monitored vehicle. Dial-up access to the switch offers no interference threat, and can provide a caller immediate location information.<sup>13/</sup> As to communications with the vehicle, the Gas Utilities cannot imagine a vehicle equipped with MLS would not also be equipped with either a

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<sup>11/</sup> As Pinpoint notes a "number of petitioners persuasively argue that interconnected communications should be eliminated or severely restricted." Pinpoint Opposition at 21 & n. 55, citing Gas Utilities' Petition at 15-17; Cellnet Data Petition at 12; UTC Petition at 9. See also SBMS Opposition at 15-17.

<sup>12/</sup> See also Mobilevision Opposition at 3. Mobilevision otherwise offers no defense to the various petitions filed which urged the Commission to restrict interconnected communications.

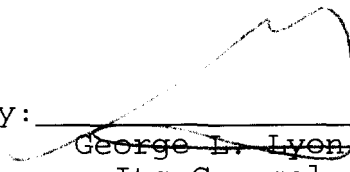
<sup>13/</sup> Airtouch Teletrac also seems to confuse the limits for interconnected store and forward communications suggested by some petitioners, asserting those limits would be applied to location data transmissions. See Airtouch Teletrac Opposition at 15 & nn. 22-24, discussing Part 15 Coalition Petition at 11-12 and UTC Petition at 10. Those petitions were clearly addressed to interconnected traffic to and from vehicles, not system status and location update messages.

cellular, PCS, SMR, or other interconnected two-way real-time radio service to allow access from outside the service area.<sup>14/</sup>

11. In light of the above discussion, the Gas Utilities urge the Commission to adopt their Petition for Limited Reconsideration and to deny those petitions for reconsideration inconsistent therewith.

Respectfully submitted,

**AD HOC GAS DISTRIBUTION UTILITIES COALITION**

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<sup>14/</sup> Significantly MLS's most compelling public interest applications do not require non-emergency voice interconnection, and no evidence exists in the record to support such a need. Vehicle theft tracking requires no such service. Covert vehicle police surveillance requires no such service. Police and other emergency fleet management is not efficiently conducted with interconnected voice traffic, especially store and forward. Rather, police and other emergency services use two-way radios for dispatching and routine communications, and cellular or other real time mobile communications for interconnected traffic. Utilities and other businesses employ SMR and industrial radio for real-time voice communications purposes and would not be expected to employ an interconnected service.

On a related matter, the Gas Utilities emphasize again they do not in principle oppose voice communications for emergency (i.e., safety of life and property) situations. While favoring a panic button or pre-programmed emergency message setup, the Gas Utilities do not object to emergency voice communications to the system or an emergency dispatch point. The important point is there must be an equipment based limitation on the subscriber's ability to place interconnected traffic, or there will be no limit on the interconnected traffic placed.

**CERTIFICATE OF SERVICE**

I, Deirdre Coppage, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, Chartered, certify that I have, on this 7th day of June, 1995, placed in the United States mail, first class postage pre-paid, a copy of the foregoing Comments on Petitions for Reconsideration to the following:

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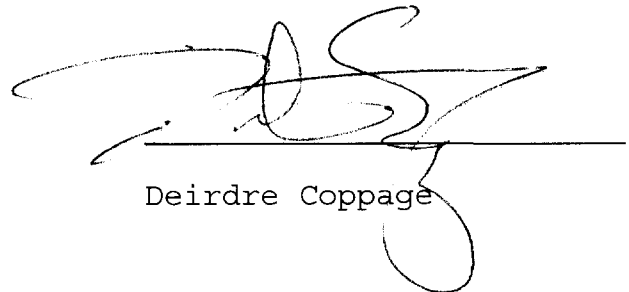
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